IN THE HIGH COURT OF DELHI

FAO No.261/2003

The Management,
M/s K.L.Rathi Steel Ltd. ..... Petitioners
! through: Mr. D.K.Garg, Advocate with
Mr.Manzoor Ali Khan, Advocate.

VERSUS

$ Smt.Kamlesh Kumari & Ors. ..... Respondents
^ through: Mr.Sanjay Gupta, Advocate.

% DATE OF DECISION: 26.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Workman Kashi Ram Sharma was admittedly an employee of the appellant working as a clerk since 1970. His last drawn wages were Rs.3400/- per month. On 12.2.1995 he left for his office. His daily journey would begin by foot from his residence to the bus stop. He would board a bus from the bus stop near his house and disembark at a bus stop near his office wherefrom, on foot, he would reach his office. On the day in question while proceeding to the bus stop near his house, accompanying by his father-in-law he felt uneasy. He complained

of chest pain. Unfortunately, before medical aid could be given he died.

2. His dependants sought compensation under the Workmen Compensation Act and predicated the claim by placing reliance upon a decision of the Supreme Court reported as AIR 1964 SC 193 *G.M., B.E.S.T. Undertaking Vs. Agnes*.

3. Denying liability, the management stated that the employee suffered a heart attack not during course of employment. The management relied upon the decision of the Supreme Court reported as (1996) 6 SCC 1 *Regional Director, E.S.I. Corporation & Anr. Vs. Francis De Costa And Another*.

4. The claimants predicated an additional claim, being that, due to stress caused on the person of the injured due to extreme work conditions and excess work being taken from the deceased the heart attack was an occupational disease as per Section 2(8) of the Employees State Insurance Act, 1948.

5. Vide impugned order dated 6.2.2003 the Commissioner, Workmen Compensation has not decided on the second issue namely, whether the cardiac arrest cold be treated as an occupational disease. Evidence pertaining to the work condition of the workman has not been discussed.

6. Placing reliance upon the decision in *Agnes* case(supra) Tribunal has held that since the deceased was on the way to his office he would be deemed to be at his workplace.

7. Learned counsel for the respondent concedes that in *Francis De Costa's* case decision in *Agnes* case was noted and distinguished in para 16 of the report.

8. Para 15 and 16 of the decision in *Francis De Costa* case read as under :-

> "15. Strong reliance was placed by Shri Chacko on a decision of this Court in *G.M., B.E.S.T. Undertaking v. Agnes.* In this case, one bus driver of the appellant-Corporation after finishing the day's work left for home in a bus belonging to the employer's undertaking which met with an accident as a result of which he died. His widow claimed compensation under the Workmen's Compensation Act and the question was whether the accident had arisen out of and in the course of employment. It was held by Subba Rao and Mudholkar, JJ (Raghubar Dayal, J. dissenting) that the bus driver was given facility by the management to travel in any bus belonging tot he undertaking. It was given because efficiency of the service demanded it. Therefore, the right of the bus driver to travel in the bus was to discharge his duty punctually and efficiently. This was a condition of service and there was an obligation to travel in the said buses as a part of his duty. It was held that in the case of a factory, the premises of an employer was a limited one but in the case of a City Transport Service, the entire fleet of buses forming the service would be 'premises'. This decision in our view, does not come to the assistance of the employee's case. An employee of a Transport Undertaking was travelling in a vehicle provided by the employer. Having regard to the purpose for which he was travelling and also having regard to the obligation on the part of the employee to travel in the said buses as a part of his duty, the Court came to the conclusion that this journey was in the course of his employment because the entire fleet of buses formed the premises within which he worked.
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> 16. But in the case before us, the facts are entirely different. The employee was not obliged to travel in any particular way under the terms of employment nor can it be said that he was travelling in a transport

provided by the employer."

9. It is not a case where the deceased employee was traveling in a vehicle provided by the employer. Thus, view taken by the Commissioner, Workman Compensation is contrary to law.

10. The appeal has to be allowed. But, matter has to be remanded to the Commissioner Workman Compensation to consider the evidence on record and take a decision whether the death of the employee could be termed as a death occasioned by an occupational disease arising out of the employment.

11. The appeal is allowed.

12. Order dated 6.2.2003 is set aside. Matter is remanded to the Commissioner, Workman Compensation for fresh adjudication in light of the observations in the present order.

13. Parties shall appear before the Commissioner, Workmen Compensation on 17.12.2007.

14. No costs.

November 26, 2007 **PRADEEP NANDRAJOG, J.**
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